

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Evelina Calcano,

Plaintiff,

—v—

Tumi, Inc.,

Defendant.

19-CV-11435 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On May 1, 2020, Defendant filed a motion to dismiss. Dkt. No. 10. Pursuant to Rule 3.F of this Court’s Individual Practices in Civil Cases, on or before May 11, 2020, Plaintiff must notify the Court and its adversary in writing whether (1) Plaintiff intends to file an amended pleading and when it will do so or (2) Plaintiff will rely on the pleading being attacked. Plaintiff is on notice that declining to amend Plaintiff’s pleadings to timely respond to a fully briefed argument in Defendant’s motion to dismiss may well constitute a waiver of the Plaintiff’s right to use the amendment process to cure any defects that have been made apparent by the Defendant’s briefing. *See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160 (2d Cir. 2015) (leaving “unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility”).

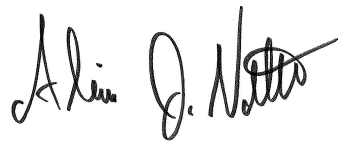
If Plaintiff chooses to amend, Defendant may then (a) file an answer; (b) file a new motion to dismiss; or (c) submit a letter stating that they rely on the initially-filed motion to dismiss.

Nothing in this Order alters the time to amend, answer or move provided by the Federal Rules of Civil Procedure or Local Rules.

The initial pre-trial conference scheduled for May 22, 2020 is hereby adjourned pending resolution of this motion.

SO ORDERED.

Dated: May 4, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", with a stylized flourish at the end.

ALISON J. NATHAN
United States District Judge